UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

Heidy Samantha CORAL LOJA

Plaintiff-Petitioner,

vs.

KRISTI NOEM, Secretary of the United States Department of Homeland Security;

PAMELA BONDI, Attorney General of the United States;

MARY DE ANDA-YBARRA, Field Office Director of Enforcement and Removal Operations, El Paso Field Office; and

CURTIS TAYLOR,
Commanding General, Fort Bliss Military Base, *in their official capacities,*

Defendant-Respondents.

Case No. 3:26-00095

PETITION FOR WRIT OF HABEAS CORPUS

1. Petitioner, Heidy Samantha Coral Loja, by her own and proper person and through her attorneys Terja Bouvin Larsen (pro hac vice to be submitted), Brendan K. McBride, and Maria Nereida Jaimes, hereby petitions this Honorable Court to issue a Writ of Habeas Corpus to review her unlawful arrest and detention while she waits for her U Visa and SIJS Petition to be adjudicated by U.S. Citizenship and Immigration Services (USCIS).

INTRODUCTION

2. On October 28, 2000, the Victims of Trafficking and Violence Protection Act of 2000 ("Crime Victims Act") was signed into law. This Act permits immigrants who are victims

of serious crimes and who assist law enforcement to apply for and receive "U" nonimmigrant visas. After possessing U nonimmigrant status for three years, such immigrants may apply for lawful permanent resident status.

3. In 2008, Congress expanded the protections for noncitizens who had come forward to report crime by authorizing employment for U visa applicants who had "a pending, bona fide application" awaiting full adjudication. This process, known as the Bona Fide Determination process (BFD), provides an opportunity for certain petitioners to receive work permits and deferred action while their petitions are pending.

4. Petitioner is a beneficiary of deferred action. She is an 18-year-old Spanish and Ecuadorian citizen who was raised in Ecuador. The Petitioner arrived in the United States on July 4, 2018, at the age of eleven, on the Visa Waiver Program or Electronic System for Travel Authorization (ESTA). Later, on June 28, 2019, her mother filed an I-918 petition for Nonimmigrant Status based on domestic violence by the Petitioner's father against her mother. The Petitioner's mother included her daughter on that application as a derivative.

5. As U visa applicants, the Petitioner and her mother submitted sensitive information to the government, paid the required fees, and passed rigorous background checks to receive their immigration benefit. In return, the government first issued Bona Fide Determination Notices in May 2024, assuring that they would not be targeted for arrest or removal as long as they complied with the government's requirements.

6. Nevertheless, Miss Coral Loja was recently arrested on January 14, 2026, by Immigration and Customs Enforcement (ICE) agents as she was driving to class at Anoka Ramsey Community College in Coon Rapids, Minnesota. She was supposed to have dropped her

mother off at her chemotherapy appointment that morning, but her mother decided to post-pone the appointment due to health complications from the chemotherapy.

7. The Petitioner was detained without a warrant in Minnesota and on the same day, was transported to the El Paso Camp East Montana ICE detention facility, where she has remained ever since. At the time of her arrest -and at all times since then- there had been no material change in Miss Coral Loja's circumstances: her deferred action was valid, and she does not pose a threat to public safety or national security. In fact, if her U visa is approved, she will be eligible to become a lawful permanent resident. And of course, as a deferred action beneficiary, she cannot be removed from the United States.

8. Miss Coral Loja's warrantless arrest violated her statutory and Fourth Amendment rights. Her detention, despite her valid deferred action, contravenes the fundamental Due Process protections of the U.S. Constitution and runs afoul of the government's own regulations governing the BFD EAD's provision and termination. Accordingly, Miss Coral Loja asks this Court to issue a Writ of Habeas Corpus ordering her immediate release from ICE custody.

JURISDICTION

9. Petitioner is in the physical custody of Respondents. Petitioner is detained at El Paso Camp East Montana ICE detention facility.

10. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

11. Federal district courts have jurisdiction to hear habeas claims brought by noncitizens challenging the lawfulness of their detention. See *Demore v. Kim*, 538 U.S. 510,

516–17 (2003) (recognizing habeas jurisdiction over immigration detention challenges); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001) (same).

12. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

13. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for the Western District of Texas, the judicial district in which Petitioner currently is detained.

14. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Western District of Texas.

PARTIES

15. Petitioner **Heidy Samantha Coral Loja** is an 18-year-old dual citizen of Spain and Ecuador who has resided in the United States since she was eleven (11) years old. She has had deferred action since May 2024, and it is valid until May 1, 2028. Besides, she is eligible for Special Immigrant Juvenile Status and has an I-360 pending with USCIS. Ever since being unlawfully arrested by ICE on January 14, 2016, Miss Coral Loja has been in ICE custody at the El Paso Camp East Montana ICE detention facility.

16. Respondent **Kristi Noem** is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA) and oversees ICE, which is responsible for the Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

17. Respondent **Pamela Bondi** is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. She is sued in her official capacity.

18. Respondent **Mary De Anda-Ybarra** is the Field Office Director for El Paso ICE. As such, De Anda-Ybarra is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. She is named in her official capacity.

19. Respondent **Curtis Taylor** is the Commanding General at the Fort Bliss Military Base, where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

LEGAL FRAMEWORK

20. For the last three decades, Congress has repeatedly and consistently acted to protect noncitizen victims of crime. By creating paths to legal status and citizenship through the VAWA, U Visa, and T visa programs, and by authorizing and approving eligibility for deferred action and employment for petitioners while their petitions are pending, Congress's clear intent is to encourage noncitizen victims to help with exposing and prosecuting crime to protect them from removal and further exploitation if they do.

21. Congress enacted VAWA in 1994 to address the widespread problem that many noncitizens stayed in abusive relationships because an abusive family member held the key to their permanent immigration status in the United States. *See* VAWA, Title IV, Pub. L. 103-322, 108 Stat. 1796, 1902 (September 13, 1994. "[T]he goal of the bill is to 'permit [] battered immigrant women to leave their batterers without fearing deportation." *Hernandez v. Ashcroft*, 345 F.3d 824, 841 (9th Cir. 2003) (quoting H.R. Rep. No. 103-395, at 25).

22. In 2000, Congress passed the Victims of Trafficking and Violence Protection Act of 2000, which included the Violence Against Women Act of 2000 ("VAWA 2000). Title V, Pub. L. No. 106-386, 114 Stat. 1464, 1518. Recognizing that VAWA protected some survivors of spousal abuse but left many survivors of violent crime without protection and unlikely to report such crime, Congress expanded protections to survivors of other serious crimes when it reauthorized VAWA in 2000. Specifically, VAWA 2000 created the U Nonimmigrant Status, commonly referred to as the U Visa, which provides a path to citizenship for non-citizen survivors of qualifying crimes who assist law enforcement in investigating or prosecuting those crimes. *See* VAWA 2000, § 1513(a)(2)(B), (b); 8 U.S.C. § 1101(a)(15)(U).

23. Underscoring the importance of encouraging noncitizen victims of crime to feel comfortable reporting crime and working with law enforcement authorities, Congress authorized DHS to waive virtually any grounds of inadmissibility to U-Visa petitioners in the public interest. VAWA 2000 § 1513(e); 8 U.S.C § 1182(d)(14). Even a noncitizen "who is the subject of a final order of removal, deportation, or exclusion is not precluded from eligibility." 8 C.F.R. § 214.14(c)(1)(ii).

24. In the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5044, 5053 ("TVPRA"), Congress expanded the protections for noncitizens who had come forward to report crime. Most relevant to this action, the TVPRA added §237(d) to the Immigration and Nationality Act (INA), which authorized DHS to issue a stay of any removal order against a U or T visa applicant if the petition "sets forth a prima facie case for approval." 8 U.S.C. § 1227(d)(1). Any such stay remains in effect until the U or T visa is approved or denied, during which time the applicant "shall not be removed." 8 U.S.C. §§ 1227(d)(1)-(3).

25. The TVPRA also authorized employment for U visa petitioners who had "a pending, bona fide application" awaiting full adjudication. TVPRA §201(c) (codified at 8 U.S.C. § 1184(p)(6)). As stated by USCIS, the Bona Fide Determination process "provides an opportunity for certain petitioners to receive BFD [work permits] and deferred action while their petitions are pending, consistent with the [TVPRA]." PM vol. 3, pt. C, ch. 5.

26. Congress created BFD protections in recognition that the full adjudication of a U visa necessary for placement on the waiting list involves a lengthy process, and Congress intended that petitioners with valid petitions promptly receive protection. Indeed, the bipartisan bill's co-sponsors acknowledged the importance of protection from removal, stating that "By protecting the victims and not sending them back to their home country where they are often exploited in a vicious cycle of exploitation, we say to the victims we will make every effort to make you safe and secure." 154 Cong, rec. H10888-01, H10902, 2008 WL 5169865 (Statement of Rep. Smith).

27. In the BFD process, USCIS conducts a streamlined initial review to determine whether an application is "bona fide." The determination is "based on the petitioner's compliance with initial evidence requirements and successful completion of background checks," after which USCIS "considers any national security and public safety risks, as well as any other relevant considerations," in deciding whether to issue an employment authorization document ("EAD") and deferred action. PM, vol. 3, pt. C, ch. 5. "If USCIS determines a principal petitioner and any other qualifying family members have a bona fide petition and warrant favorable exercise of discretion, USCIS issues them BFD EADs and grants deferred action." PM, vol. 3, pt. C, ch.5. C. A BFD EAD and deferred action are valid for four years and renewable. PM vol. 3, pt. C, ch.5.

28. Employment authorization granted under BFD may be revoked, and deferred action terminated. USCIS identifies four circumstances when early revocation of deferred action is appropriate: (1) "If USCIS determines a national security or public safety concern is present," (2) "If USCIS determines the BFD EAD and deferred action in no longer warranted," (3) "if Form I-918 Supplement B law enforcement certification is withdrawn" by the certifying agency, or (4) "USCIS determines the prior BFD EAD was issued in error." *Id.* If changed circumstances appear to warrant such revocation, USCIS "initiates a waiting list adjudication to gather additional information and evidence." *Id.* ch. 5.C.1.

29. For many years, the process described above has protected the victim of crime from removal from the United States. However, shortly after President Trump took office for his second term, ICE Acting Director Caleb Vitello issued the 2025 Guidance, reversing course from decades of agency practice under which immigration agencies generally refrained from enforcement against survivors of serious crime, unless warranted by adverse factors. Under the De Facto Revocation Policy, ICE now routinely detains and deports people who have valid grants of deferred action from USCIS in connection with pending U or T visa petitions. Neither ICE nor USCIS provides any notice or opportunity to be heard regarding whether such deferred action should be revoked prior to doing so. Instead, ICE treats its enforcement action as a de facto revocation of deferred action. This policy unlawfully renders the protection of deferred action meaningless.

FACTS

30. Miss Coral Loja is an 18-year-old Spanish and Ecuadorian citizen who was raised in Ecuador. She arrived in the United States on July 4, 2018, at the age of eleven on the Visa Waiver Program or Electronic System for Travel Authorization (ESTA).

31. Later, on June 28, 2019, her mother filed an I-918 petition for Nonimmigrant Status based on domestic violence by the Petitioner's father against her mother. The petitioner's mother included the Petitioner on that application as a derivative.

32. The application was later determined to be bona fide, and Miss Coral Loja and her mother were granted deferred action and issued Employment Authorization Documents, which expire on April 30, 2028.

33. Terja K Bouvin Larsen has represented the mother and daughter on a pro bono basis since February 14, 2019, because Miss Coral Loja's mother has been living with breast cancer since that time. While Miss Coral Loja's mother is still living, the breast cancer is now considered stage IV. Attorney Bouvin Larsen will request pro hac vice admission to continue to represent the interests of her client in this matter.

34. Given Miss Coral Loja's mother's precarious health and Miss Coral Loja's dependence on her mother's I-918 U Nonimmigrant status application, requiring her mother to be alive at the time of the final adjudication, Miss Coral Loja also filed an I-360 Special Immigrant Juvenile Petition on July 23, 2025. This petition remains pending. This petition is also due to Miss Coral Loja suffering abuse at the hands of her biological father, who is her mother's ex-husband.

35. On the morning of January 14, 2026, Miss Coral Loja was driving on her way to class at Anoka Ramsey Community College in Coon Rapids, Minnesota, when ICE agents stopped her. She was supposed to have first dropped her mother off at her chemotherapy appointment, but her mother post-poned the appointment because she was experiencing complications from the chemotherapy. Miss Coral Loja reports that the ICE officers pushed the window of her car down even though she was cooperating. Miss Coral Loja tried to explain to

the ICE officer that she had deferred action and employment authorization, but the ICE officer told her that "it did not matter; you aren't legal." In the process of the stop, Miss Coral Loja took her glasses off and placed them in her pocket. As the ICE officers took her, they found the glasses in her pocket and left the glasses in the car, so she has been detained without her needed glasses.

36. Later, on the same day, Miss Coral Loja was transported to the El Paso Camp East Montana ICE detention facility. Miss Coral Loja has remained detained at the El Paso Camp East Montana ICE detention facility since January 14, 2026.

37. At the time of her arrest and at all times since, Miss Coral Loja's BFD and deferred action have been valid. USCIS has not given her any Notice of Intent to Revoke Employment Authorization and, upon information and belief, has not initiated any termination under 8 C.FR. 274a.14(b), as required by law, to revoke her BFD EAD.

38. Miss Coral Loje relied on her BFD EAD and deferred action in structuring her life. Before detention, she was attending college, supporting her mother, and serving her community. She has missed class and work since her arrest on January 14, 2026. Miss Coral Loja ordered her affairs around the government's promise that, for the duration of her BFD EAD and deferred action grant, she would not be targeted for arrest or removal.

39. Nevertheless, Miss Coral Loja remains deprived of her physical liberty, despite her valid BFD EAD and deferred action. She is separated from her mother, who suffers from stage IV breast cancer, detained in Texas, far from Minnesota. On January 18, 2016, Miss Coral Loja informed the undersigned attorney Terja K Bouvin Larsen that she had not been provided with the medication for her thyroid that she desperately needed. Besides, Miss Coral Loja is detained in poor confinement conditions as she is staying with about 40 people in a room where

the lights do not completely shut off at night and where the noise and smell are unbearable. Miss Coral Loja has been wearing the same pants for days, and although she was provided with clothes, those clothes were previously worn by other people, including her underwear. Miss Coral Loja's family members are unable to provide her with fresh clothes, money, or medication because they are in Minnesota, about 1,400 miles away from El Paso, Texas. She was also detained without her glasses, which she needs to see far.

40. Miss Coral Loja's studies are also interrupted. Miss Coral Loja endures the anxiety and uncertainty of confinement even as DHS's own regulations confirm that she should not be removed from the United States while her deferred action remains valid. The normal procedure for Anoka Ramsey Community College is that a student is disenrolled if they do not show up to class for two weeks.

41. The government's decision to detain Miss Coral Loja, despite being unable to remove her, inflicts concrete, ongoing harm upon her and undermines the rule-of-law commitments upon which she–and all other noncitizen victims of crime–reasonably relied.

CLAIMS FOR RELIEF

COUNT I

Violation of the Substantive Due Process Protections of the Fifth Amendment of the Constitution

42. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

43. The Supreme Court has long recognized that noncitizens physically present in the United States are entitled to due process protections, regardless of their immigration status *Zadvydas*, 533 U.S. at 693; *Mathews v. Diaz*, 426 U.S. 67, 77 (1976). Freedom from physical

restraint "lies at the heart of the liberty that the Due Process Clause protects." *Zadvydas*, 533 U.S. at 690.

44. Detention of a person with a valid, unrevoked grant of BFD EAD and deferred action violates the Fifth Amendment's protection of liberty for at least two reasons.

45. First, to comply with the Due Process Clause, detention must always bear "some reasonable relation to the purpose for which the individual was committed." *Jackson v. Indiana*, 406S. 715, 738 (1972); *Brown v. Taylor*, 911 F.3d 235, 243 (5th Cir. 2018).

46. The only legitimate purpose, consistent with due process, for federal civil immigration detention is to prevent flight risk and ensure the detained person's attendance for a legal hearing adjudicating their status or potential removal, or to otherwise ensure the safety of the community. *Zadvydas*, 533 U.S. at 690–91.

47. Here, Miss Coral Loja's detention is not reasonably related to its purpose. First, there is no reason to believe that Miss Coral Loja would not attend any immigration proceedings. She came to the United States when she was eleven years old and has made her life here. More importantly, she has reliably complied with any and all government requirements related to her U Visa application since she applied almost seven years ago. Second, there has been no material change regarding public safety since Miss Coral Loja passed her public safety assessments. Detention is constitutional only if it serves a lawful purpose, and here, there is none.

48. Second, when a noncitizen is not deportable, insofar as their BFD grant bars removal, the Due Process Clause requires that any deprivation of liberty be narrowly tailored to serve a compelling government interest. *See Reno v. Flores*, 507 U.S. 292, 301–02 (1993) (holding that due process "forbids the government to infringe certain 'fundamental' liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored

to serve a compelling state interest"); *Demore*, 538 U.S. at 528 (applying a less rigorous standard for "deportable [noncitizens]").

49. Here, Miss Coral Loja has significant ties to the United States, and she has passed a rigorous security check to obtain her BFD EAD and deferred action. Accordingly, she is neither a flight risk nor a threat to public safety, so the high standard applicable to her case cannot be met. *See Santiago v. Noem*, No. EP-25-CV-361-KC, 2025 WL 2792588, at *11 (W.D. Tex. Oct. 2, 2025) ("Where an individual is protected from removal through deferred action, their detention serves no valid purpose), citing *Sepulveda Ayala v. Bondi* ("Sepulveda Ayala II"), 25-cv-1063, 2025 WL 2209708, at *4 (W.D. Wash. Aug. 4, 2025) (concluding government had no legal basis to detain petitioner where deferred action prevented his removal).

50. Miss Coral Loja's continued detention is unrelated to the purposes justifying it as a constitutional matter, and therefore contravenes the fundamental Due Process protections in the Fifth Amendment of the Constitution, and is causing Miss Coral Loja substantial and irreparable harm.

COUNT II

Violation of the Administrative and Procedure Act

51. Petitioner incorporates by reference the allegations of fact outlined in the preceding paragraphs.

52. The Administrative Procedure Act provides that courts "shall . . . hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," or is "unsupported by substantial evidence." 5 U.S.C. §§ 706(2)(A), (E).

53. At the time of her arrest and at all times since, Miss Coral Loja has had a valid grant of BFD EAD and deferred action, rendering her lawfully present under 8 C.F.R. § 1.3(a)(4)(vi). Indeed, it is through her BFD that she received her employment authorization document.

54. Detaining Ms. Coral Loja despite her valid grant of deferred action, which prohibits her removal from the United States; despite her long-standing ties to the United States; and despite no changed circumstances suggesting she presents any risk of flight or threat to public safety is arbitrary and capricious, an abuse of discretion, and unsupported by substantial evidence.

55. The arbitrary and capricious detention of Ms. Coral Loja, despite her valid BFD EAD and deferred action, causes her irreparable harm with each day she remains detained.

COUNT III

Violation of Procedural Due Process Protections of the Fifth Amendment to the Constitution

56. Petitioner incorporates by reference the allegations of fact outlined in the preceding paragraphs.

57. The procedural due process guarantee of the Fifth Amendment requires that individuals be provided notice and an opportunity to be heard before being deprived of liberty or property interests. *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976).

58. One of the first inquiries in any case of violation of procedural due process is whether the plaintiff has a protected property or liberty interest and, if so, the extent or scope of that interest. *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 569–70 (1972). Reliance on government policies and assurances may give rise to protected expectations under the Due Process Clause. *Perry v. Sindermann*, 408 U.S. 593, 601–03 (1972).

59. Here, Miss Coral Loja reasonably relied on government assurances that beneficiaries of BFD EAD and deferred action provide some protection from arrest, detention, and removal for those who follow the rules, and allow them to establish stable lives in the United States. This reliance has created a legally protectable liberty interest.

60. Under the familiar *Eldridge* Due Process test, then, the government's decision to arrest Miss Coral Loja without any notice or an opportunity to respond, and continue to detain her without any opportunity to meaningfully challenge that detention, clearly violates her procedural due process rights. First, Miss Coral Loja has a substantial, legally protectable liberty interest, created by her reliance on government U Visa policies and associated assurances, at stake. Second, the risk of erroneously depriving Miss Coral Loja of that interest is severe, as she is separated from her sick mother, community, and school indefinitely, and has been thrown into sudden instability. She has been afforded absolutely no process, let alone constitutionally sufficient process, prior to or since this deprivation, making the value of additional process high. *See Eldridge*, 424 U.S. at 343. Third, the government's interest in detaining Miss Coral Loja is minimal. Miss Coral Loja cannot be deported because of her valid BFD EAD and deferred action, and she does not present any flight risk or danger: she has been a continuous resident in the United States since she was eleven years old, has obvious and strong ties to the United States, and has gone through a rigorous vetting process to obtain her BFD EAD. Her detention is thus not rationally related to any purpose. An additional process would entail little to no burden on the government, especially in light of the process the government must already follow to terminate her BFD EAD per 8 C.FR. 274a.14(b). *See Eldridge*, 424 U.S. at 347.

61. Accordingly, Miss Coral Loja's continued detention without an opportunity to be heard violates her procedural due process rights under the Fifth Amendment of the Constitution.

COUNT IV

Violation of Fourth Amendment of the Constitution and under 8 C.F.R. § 1.3(a)(4)(vi)

62. Petitioner incorporates by reference the allegations of fact outlined in the preceding paragraphs.

63. The Fourth Amendment protects "[t]he right of the people to be secure in their persons . . . against unreasonable searches and seizures." U.S. Const. amend. IV. The Supreme Court has consistently recognized that immigration arrests and detentions are "seizures" within the meaning of the Fourth Amendment. *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1044 (1984) (acknowledging that deportation proceedings are civil, but the Fourth Amendment still applies to the "seizure" of the person).

64. As a general matter, the Fourth Amendment requires that all arrests entail a neutral, judicial determination of probable cause. *See Gerstein v. Pugh*, 420 U.S. 103, 114 (1975). That neutral, judicial determination can occur either before the arrest, in the form of a warrant, or promptly afterward, in the form of a prompt judicial probable cause determination. *See id.* Arrest and detention of a person, including of a noncitizen, absent a neutral, judicial determination of probable cause, violates the Fourth Amendment of the Constitution. *Id.*; *see also Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 57 (1991). This determination must occur within 48 hours of detention, which includes weekends, unless there is a bona fide emergency or other extraordinary circumstance. *See Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 57 (1991).

65. Congress enacted a strong preference that immigration arrests be based on warrants. *See Arizona v. U.S.*, 567 U.S. 387, 407–08 (2012). The Immigration and Nationality Act thus provides immigration agents with only limited authority to conduct warrantless arrests. 8 U.S.C.§ 1357(a)(2). Specifically, an officer must have "reason to believe" the person is violating the immigration laws and that the person "is likely to escape before a warrant can be

obtained." *Id.* Federal regulations track the strict limitations on warrantless arrests. *See* 8 C.F.R. § 287.8(c)(2)(ii).

66. Here, at the moment of seizure, Miss Coral Loja (a) held a current, unrevoked BFD EAD and deferred action, making her lawfully present under 8 C.F.R. § 1.3(a)(4)(vi), and (b) last entered the United States lawfully, on the Visa Waiver Program or Electronic System for Travel Authorization (ESTA). And, she was on her way to class at Anoka Ramsey Community College in Coon Rapids, Minnesota.

67. Therefore, no officer could hold a reasonable belief that she was present in violation of the immigration laws, nor that she was likely to escape before a warrant could be obtained. *See* 8 U.S.C. § 1357(a)(2). Indeed, when the ICE officer intercepted Miss Coral Loja, she insisted she was lawfully present in the United States and showed her receipts and notices showing her BFD EAD, but the officer told her that "it did not matter."

68. Without a statutory basis to arrest, the Government is required under the Fourth Amendment to secure a prompt judicial probable cause determination to continue holding Miss Coral Loja. *Gerstein*, 420 U.S. at 114; *McLaughlin*, 500 U.S. at 56–57. Miss Coral Loja received no such judicial determination, yet her detention continued well beyond 48 hours, rendering it presumptively unconstitutional.

69. The Government cannot salvage this seizure by invoking generalized immigration enforcement interests. The Fourth Amendment's reasonableness inquiry is fact-specific and demands individualized justification for both the arrest and the extended detention. *See United States v. Brignoni-Ponce*, 422 U.S. 873, 882–84 (1975); *Gerstein*, 420 U.S. at 114. Miss Coral Loja entered the United States legally, and she is now lawfully present based on her deferred action through her U Visa application.

70. Miss Coral Loja's warrantless arrest occurred in violation of the clear, narrow circumstances permitted by statute. There has been no finding of probable cause or other determination by a neutral magistrate that would cure this infirmity; her arrest lacked any legal basis, and there continues to be no legal basis for her detention. Therefore, her arrest and ensuing detention constitute an unreasonable and unlawful seizure in violation of the Fourth Amendment.

COUNT V

Violation of The *Accardi* Doctrine with Respect to 8 C.F.R. § 287.8(c)(2)(i), (ii)

71. Petitioner incorporates by reference the allegations of fact outlined in the preceding paragraphs.

72. Under the *Accardi* doctrine, the government and its agencies are required to follow their own binding rules. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954). Where a regulation governing agency behavior has been promulgated, citizens and noncitizens alike are entitled to "that due process required by the regulations." *Id.* at 268.

73. Regulations governing immigration enforcement require that warrantless arrests conform to the standards in 8 C.F.R. § 287.8(c). Specifically, for any arrest, immigration officers must have reason to believe that an individual committed an offense against the United States or was present illegally. 8 C.F.R. § 287.9(c)(2)(i). And, for a warrantless arrest, officers must also have reason to believe that an individual is "likely to escape before a warrant can be obtained." 8 C.F.R. § 287.8(c)(2)(ii).

74. At the time of the arrest and at all times since, Miss Coral Loja has had a valid BFD EAD and deferred action. Her entry to the United States was a lawful entry via ESTA. And, Miss Coral Loja was on her way to school when she was apprehended. Therefore, Miss Coral

Loja's arrest and continued detention contravene regulations governing immigration arrests in violation of the *Accardi* doctrine.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

a. Assume jurisdiction over this matter;

b. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;

c. Prohibit Petitioner's removal from the United States and transfer outside the Western District of Texas or the District of Minnesota during the pendency of this action;

d. Declare that Petitioner's arrest and continued detention violate the Fifth Amendment of the U.S. Constitution; the Administrative Procedure Act; the *Accardi* doctrine as to 8 C.F.R. 287.8(c)(2)(i), (ii); and the Fourth Amendment of the U.S. Constitution;

e. Grant the writ of habeas corpus and order Petitioner's immediate release from ICE custody;

f. In the alternative, grant bail pending the conclusion of the habeas review; *see, e.g.*, *Sanchez v. Winfrey*, No. CIV.A.SA04CA0293RFNN, WL 1118718 (W.D. Tex. Apr. 28, 2004) (granting bail where the applicant does not pose a risk of flight or danger, and finding that such relief is necessary to "give effect to the requested habeas relief");

g. Award Petitioner attorneys' fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and

h. Grant such other and further relief as law and justice require.

Date:

Respectfully Submitted:

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Attorneys for Petitioner

VERIFICATION

I, Terja Kristina Bouvin Larsen, being duly sworn upon oath, hereby state: I represent the Petitioner in these habeas corpus proceedings. The Petitioner, Heidy Samantha Coral Loja, is currently being held at the El Paso Camp East Montana ICE detention facility, and she is not able to appear in my office to sign the Verification. I have reviewed the record of the removal proceedings, discussed this matter with the Petitioner and the Petitioner's family. I verify that the information contained in the foregoing Petition is true and correct to the best of my knowledge and belief.

Terja K Bouvin Larsen
Attorney for Petitioner